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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA JONATHAN LAZOS,

Defendant and Appellant.

B300314

(Los Angeles County
Super. Ct. No. BA259099)

APPEAL from an order of the Superior Court of Los Angeles County. Curtis B. Rappe, Judge. Affirmed.

Kathy R. Moreno, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Kristen J. Inberg and Roberta L. Davis, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant and appellant Joshua Jonathan Lazos appeals from the denial of his petition for resentencing pursuant to Penal Code section 1170.95. We affirm.

In 2004, a jury found defendant guilty of one count of first degree murder arising from an incident in which he and his brother confronted the victim, yelling gang names, and shot the victim at close range. Defendant was sentenced to 25 years to life in prison. In 2009, this court affirmed defendant's conviction in an unpublished opinion (*People v. Lazos* (Mar. 11, 2009, B204121) [nonpub. opn.]).

In May 2019, defendant filed a petition for resentencing pursuant to Penal Code section 1170.95, a new statute that became effective January 1, 2019. Defendant's petition alleged he was not the actual killer, was not a major participant, and he had been convicted pursuant to the felony murder rule or the natural and probable consequences doctrine. The petition also requested appointment of counsel.

The trial court denied the petition, explaining the record established defendant was convicted either as a direct aider and abettor or as the actual killer. The court also said the jury instructions showed the jury was not instructed on felony murder or the natural and probable consequences doctrine. Defendant filed a timely appeal. We granted respondent's request to take judicial notice of the record in the direct appeal.

Defendant contends the trial court erred in summarily denying the resentencing petition without first appointing counsel. Defendant argues the trial court's denial is at odds with the statutory language and violates his state and federal constitutional rights to counsel.

We disagree. “When we interpret statutes, giving effect to legislative purpose is the touchstone of our mission.” (*People v. Valencia* (2017) 3 Cal.5th 347, 409.) “The text of the statute is integral to our understanding of the statute’s purpose.” (*Ibid.*) “We must take ‘the language . . . as it was passed into law, and [we] must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions.’ ” (*Id.* at pp. 409-410.)

Penal Code section 1170.95 was enacted as part of the legislative changes effected by Senate Bill 1437 (2017-2018 Reg. Sess.). “Senate Bill 1437 was enacted to ‘amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.’ (Stats. 2018, ch. 1015, § 1, subd. (f).)” (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.)

Penal Code section 1170.95 contemplates an initial eligibility determination by the court. Section 1170.95, subdivision (c) provides the court “shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section.”

Here, there is no reasonable factual dispute that defendant is ineligible for relief under Penal Code section 1170.95. Where there is no reasonable factual dispute as to eligibility it would be a waste of judicial resources to automatically require the appointment of counsel and briefing. Several courts have similarly interpreted the statutory language and have concluded that a defendant seeking resentencing is entitled to appointment

of counsel *only after* demonstrating a prima facie case. (See, e.g., *People v. Tarkington* (2020) 49 Cal.App.5th 892, 899-900; *People v. Verdugo* (2020) 44 Cal.App.5th 320, 328-332, review granted Mar. 18, 2020, S260493; *People v. Cornelius* (2020) 44 Cal.App.5th 54, 58, review granted Mar. 18, 2020, S260410; *People v. Lewis* (2020) 43 Cal.App.5th 1128, 1139-1140, review granted Mar. 18, 2020, S260598.) We adopt the persuasive analyses in these decisions.

Defendant's petition did not show he fell within the provisions of the statute. Penal Code section 1170.95, subdivision (a) provides, in plain language, that only persons "convicted of felony murder or murder under a natural and probable consequences theory" may file a petition seeking resentencing. Regardless of the conclusory statements in defendant's petition, defendant was charged and convicted of first degree murder based on evidence establishing he either directly aided and abetted his brother in the shooting or was the actual killer. The jury was instructed on first and second degree murder and aiding and abetting, but *not* on felony murder or the natural and probable consequences doctrine. The prosecution did not rely on either theory in prosecuting defendant. After reviewing the court file, the trial court acted in accordance with the statutory language by issuing a summary denial of the petition. Pending further guidance from our Supreme Court, we adopt the analysis of *Lewis*, that the trial court may review the record of conviction in assessing whether a defendant has made a prima facie showing. Because defendant did not satisfy the first step of establishing prima facie case, he was not entitled to appointment of counsel.

DISPOSITION

The order denying the petition for resentencing is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.